

## RETURN OF SERVICE

State of Montana

County of Gallatin

Montana Eighteenth Judicial District Court

Case Number: DV-16-740A

Plaintiff(s):

TAMMY FRIEDLUND

vs.

Defendant(s):

MOUNTAIN WEST FARM BUREAU MUTUAL INSURANCE CO., a  
foreign corp., CUNNINGHAM LINDSEY U.S., INC., a foreign corp., ABC  
Corps., ABC LLCs, and JOHN DOES 1-10

For:

Thomas J. Karem, Esq.

KAREM LAW FIRM, P.C.

P.O. Box 682

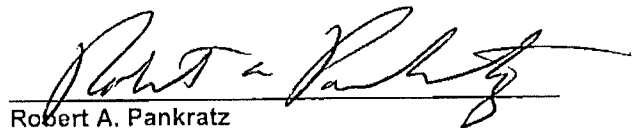
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Received by ALL PAPERS TO GO to be served on CUNNINGHAM LINDSEY U.S., INC., CORPORATION  
SERVICE COMPANY, 26 WEST SIXTH AVENUE, HELENA, MT 59624.

I, Robert A. Pankratz, do hereby affirm that on the 13th day of September, 2019 at 3:18 pm, I:

Executed service upon CUNNINGHAM LINDSEY U.S., INC., by delivering a true copy of the SUMMONS and  
COMPLAINT AND JURY DEMAND in accordance with state statutes by personally serving CINDI LEASE,  
Who Is Authorized To Accept For the Registered Agent of Record, CORPORATION SERVICE COMPANY,  
26 WEST SIXTH AVENUE, HELENA, MT 59624.

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in  
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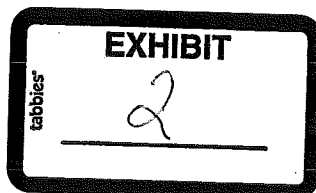


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OF DISTRICT COURT  
JENNIFER BRANCON

2019 SEP 16 PM 1:21

FILED

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

\*\*\*\*\*

BY \_\_\_\_\_ ~~As~~ DEPUTY

TAMMY FRIEDLUND,

Plaintiff,

vs.

MOUNTAIN WEST FARM BUREAU  
MUTUAL INSURANCE CO., a foreign  
corp., CUNNINGHAM LINDSEY U.S.,  
INC., a a foreign corp., ABC Corps.,  
ABC LLCs, and JOHN DOES 1-10,

Defendants.


Cause No. DV-16-740A

**ORDER RE: MOTION FOR  
EXTENSION**

Plaintiff moves for an extension regarding the Court's Notice for Failure to Prosecute dated June 25, 2019. Defendants have not been served. Plaintiff is negotiating settlement with Defendants. The deadline to serve the Summons and Complaint is October 4, 2019. The Court finds good cause to grant Plaintiff's motion.

**WHEREFORE, IT IS HEREBY ORDERED** that Plaintiff is granted an extension to prosecute the Complaint to October 4, 2019. Absent prosecution by October 4, 2019, the Court will dismiss the Complaint and Jury Demand without prejudice pursuant to Rule 4(t)(1), M.R.Civ.P.

SO ORDERED this 16<sup>th</sup> day of September, 2019.

  
HON. HOLLY B. BROWN,  
District Court Judge

cc: Thomas Karem - emailed 9/17/19

Thomas J. Karem, Esq.  
**Karem Law Firm, P.C.**  
1902 W. Dickerson St., Ste. 103  
P.O. Box 682  
Bozeman, MT 59771-0682  
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thomas@karemlaw.com

Attorney for Plaintiff

GALLATIN COUNTY CLERK  
OF DISTRICT COURT  
JENNIFER BRANDON

2019 SEP 12 PM 3:15

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BY hag DEPUTY

**MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY**

\*\*\*\*\*

TAMMY FRIEDLUND,

Plaintiff,

vs.

MOUNTAIN WEST FARM BUREAU  
MUTUAL INSURANCE CO., a foreign  
corp., CUNNINGHAM LINDSEY U.S.,  
INC., a a foreign corp., ABC Corps.,  
ABC LLCs, and JOHN DOES 1-10,

Defendants.


Cause No. DV-16-740A

**MOTION FOR EXTENSION RE:  
COURT'S NOTICE**

COMES NOW, Plaintiff, by and through counsel, and requests an extension regarding the Court's Notice for Failure to Prosecute dated June 25, 2019. Plaintiff is in the process of negotiating settlement with Defendants. The deadline to serve the summons and complaint is October 4, 2019. Plaintiff will serve the summons and complaint on or before the foregoing date should the matter not settle.

**WHEREFORE**, Plaintiff requests an extension to October 4, 2019, to proceed with prosecution of this case.

DATED this 12 day of September, 2019.

  
Thomas Karem,  
Attorney for Plaintiff

GALLATIN COUNTY CLERK  
OF DISTRICT COURT  
JENNIFER BRANDON

2019 JUN 25 PM 3:30

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BY                      DEPUTY

MONTANA EIGHTEENTH JUDICIAL DISTRICT, GALLATIN COUNTY

\*\*\*\*\*

TAMMY FRIEDLUND,	)	Cause No. DV-16-740A
	)	
Plaintiff,	)	
vs.	)	COURT'S NOTICE FOR FAILURE
	)	TO PROSECUTE
MOUNTAIN WEST FARM BUREAU	)	
MUTUAL INSURANCE CO., a foreign	)	
corp., et al,	)	
	)	
Defendants.	)	
_____	)	


The above-entitled case was filed on October 4, 2016. Pursuant to § 25-1-104, MCA,

Failure to prosecute—dismissal on initiative of court. In a district court action in which it appears on the face of the record that activity by filing of pleadings, order of court, or otherwise has not occurred for a period of 2 years and no stay has been issued or approved by the court, the court or, if the court does not act, the clerk of court shall serve notice of lack of prosecution to each party at the party's last-known address. If a pleading, order, or other activity does not occur within the 60-day period following the service of the notice and if a stay is not issued or approved during the 60-day period, the court shall, on its own motion and without further notice or hearing, dismiss the action without prejudice.

Upon review of the case, the Court notes that the last filing was on October 4, 2016, which was the Complaint and Jury Demand. There has been no stay issued or approved by the Court in this matter.

Therefore, the Court provides notice to the parties that unless a pleading or other document is filed with the Court on or before **September 13, 2019**, this matter shall be dismissed without prejudice in accordance with § 25-1-104, MCA.

DATED this 25<sup>th</sup> day of June, 2019.

  
\_\_\_\_\_  
HON. HOLLY BROWN  
District Court Judge

cc: Thomas J. Karem

*emailed 6/26/19*

1 Thomas J. Karem, Esq.  
 2 Karem Law Firm, P.C.  
 3 517 South 22<sup>nd</sup> Ave., Ste. 5  
 4 P.O. Box 682  
 5 Bozeman, MT 59771-0682  
 6 (406) 586-1986 fax 587-9461  
 7 thomas@karemlaw.com

8 Attorney for Plaintiff

GALLATIN COUNTY CLERK  
 OF DISTRICT COURT  
 JENNIFER BRANDON

2016 OCT -4 PM 4:56

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BY EP DEPUTY

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

\* \* \* \* \*

9 TAMMY FRIEDLUND,  
 10 Plaintiff,

11 vs.

12 MOUNTAIN WEST FARM BUREAU MUTUAL  
 13 INSURANCE CO., a foreign corp.,  
 14 CUNNINGHAM LINDSEY U.S., INC., a  
 15 a foreign corp., ABC Corps.,  
 16 ABC LLCs, and JOHN DOES 1-10,  
 17 Defendants.

Cause No. DV-16-740A

COMPLAINT AND JURY  
 DEMAND

*Summons Issued*

17 COMES NOW, Plaintiff, Tammy Friedlund, by and through  
 18 counsel, and states, for her complaint against Defendants, as  
 19 follows:

PARTIES

- 21 1. Plaintiff, Tammy Friedlund ("Plaintiff" or "Friedlund") is a  
 22 Montana resident residing in Gallatin County, Montana.
- 23 2. Defendant, Mountain West Farm Bureau Mutual Insurance  
 24 Company ("Defendant MWFB" or "MWFB"), is a Montana  
 25 registered foreign corporation, with a principal business  
 26 address of 931 Boulder Dr., Laramie, Wyoming 82070, and  
 27 whose Montana registered agent address is 502 S. 19<sup>th</sup> Ave.,  
 28 Ste. 307, Bozeman, Montana 59718.

1 3. Defendant Cunningham Lindsey U.S., Inc. ("Defendant  
2 Cunningham Lindsey" or "Cunningham Lindsey"), is a Montana  
3 registered foreign corporation, with a principal business  
4 address of 405 State Hiway 121 Bypass, Lewisville, Texas  
5 75067, and whose registered agent address is 26 W. Sixth  
6 Ave., Helena, Montana 59624-1691.

7 **JURISDICTION AND VENUE**

8 4. The Court has original jurisdiction over this action  
9 pursuant to § 3-5-302(b)-(c), M.C.A.

10 5. The Court has personal jurisdiction over the parties because  
11 Plaintiff is a resident of Gallatin County, Montana;  
12 Defendants transact business in Montana, enter into  
13 contracts for services and/or materials in Montana, and  
14 committed acts resulting in accrual of claims in Montana.

15 6. Venue is proper because Plaintiff resides in Gallatin  
16 County, Defendants are not residents of Montana, and/or  
17 Defendants committed acts that accrued in Gallatin County,  
18 Montana.

19 **COMMON ALLEGATIONS**

20 7. Defendant MWFB's primary business purpose is selling  
21 liability, life, and accident insurance in Montana.

22 8. On or about November 18, 2013, Defendant MWFB employed  
23 Plaintiff as a claims adjuster for claims covered by  
24 insurance policies sold by MWFB.

25 9. Defendant Cunningham Lindsey's primary business purpose,  
26 relevant here, is providing third-party claims adjustment  
27 for clients in Montana. Cunningham Lindsey does not sell  
28 insurance.



- 1 10. On or about June 1, 2015, Defendant Cunningham Lindsey  
2 employed Plaintiff as a part-time independent claims  
3 adjuster.
- 4 11. On or about October 9, 2015, Defendant Cunningham Lindsey  
5 terminated Plaintiff's employment effective immediately.  
6 The basis for Plaintiff's termination was that she "violated  
7 company policy", i.e.; Plaintiff was employed by MWFB while  
8 she was also employed as an independent claims adjuster for  
9 Cunningham Lindsey.
- 10 12. On or about October 12, 2015, Defendant MWFB terminated  
11 Plaintiff's employment effective immediately. The bases for  
12 Plaintiff's termination were that she did not follow MWFB's  
13 personnel policy and ethics regarding employment with other  
14 employers, and that Plaintiff's employment as an  
15 "independent adjuster and representing other insurance  
16 carrier's [sic] is a conflict of interest and against the  
17 company code of ethics."
- 18 13. Defendant MWFB is not a competitor of Defendant Cunningham  
19 Lindsey nor is Cunningham Lindsey of MWFB.
- 20 14. Plaintiff did not adjust claims against MWFB's insured for  
21 Cunningham Lindsey nor against Cunningham Lindsey's clients  
22 for MWFB.
- 23 15. Plaintiff exhausted Defendants' grievance procedures.  
24 Plaintiff's employment was not reinstated by either  
25 Defendant.

26 //

27 //

28 //

**COUNT I**

**Wrongful Discharge from Employment**

16. Plaintiff realleges the foregoing paragraphs under this count verbatim.
17. Plaintiff was not a probationary employee.
18. Defendants terminated Plaintiff's employment under mistaken interpretation of fact;
19. Defendants' termination of Plaintiff's employment was a pretext for an illegitimate reason;
20. Defendants' termination of Plaintiff's employment was invalid as a matter of law;
21. Defendants discharged Plaintiff without good cause.
22. Plaintiff was injured by Defendants' wrongful termination.
23. Defendants' wrongful discharge is the actual and proximate cause of Plaintiff's injuries.
24. Plaintiff is entitled to lost wages, including bonuses, fringe benefits, and interest in an amount to be determined at trial.

**COUNT II**

**Blacklisting**

25. Plaintiff realleges the foregoing paragraphs under this count verbatim.
26. Defendants prevented or attempted to prevent employment of Plaintiff by prospective employers by making false representations about Plaintiff.
27. Defendants attempted, or authorized or allowed its agents to blacklist Plaintiff, to prevent Plaintiff from obtaining employment with prospective employers.

1 28. Plaintiff was injured by Defendants' blacklisting.

2 29. Defendants' blacklisting of Plaintiff is the actual and  
3 proximate cause of Plaintiff's injuries.

4 30. Plaintiff is entitled to damages, including, without  
5 limitation, punitive damages, and interest in an amount to  
6 be determined at trial.

7 **COUNT III**

8 **Exemplary Damages**

9 31. Plaintiff realleges the foregoing paragraphs as though set  
10 forth under this count verbatim.

11 32. Defendants prevented or attempted to prevent employment of  
12 Plaintiff by prospective employers by making false  
13 representations about Plaintiff.

14 33. On or about June 17, 2015, pursuant to Defendant MWFB  
15 personnel policies, Plaintiff complained to MWFB that its  
16 insurance agents were making false statements about  
17 Plaintiff's job performance because Plaintiff would not  
18 approve an insured's hail damage claim. Instead of taking  
19 corrective action, MWFB terminated Plaintiff's employment.

20 34. Defendants terminated Plaintiff's employment without good  
21 cause.

22 35. Defendants were aware that they had violated their policies,  
23 and/or state or federal employment laws when they discharged  
24 Plaintiff or intentionally disregarded these facts when they  
25 discharged Plaintiff.

26 36. Defendants deliberately terminated Plaintiff's employment in  
27 conscious or intentional disregard of the high probability  
28 of injury to Plaintiff, or deliberately discharged Plaintiff

1 with indifference to the high probability of injury to her.

2 37. Defendants committed actual malice when it terminated  
3 Plaintiff.

4 38. Plaintiff was injured by Defendants' actual malice.  
5 Defendants' malice is the actual and proximate cause of  
6 Plaintiff's injuries.

7 39. Plaintiff is entitled to punitive damages in an amount to be  
8 determined at trial.

9 **COUNT IV**

10 **Equal Protection and Due Process**

11 40. Plaintiff realleges the foregoing paragraphs as though set  
12 forth under this count verbatim.

13 41. The Equal Protection Clause of the Fourteenth Amendment  
14 mandates that government shall not deny to any person within  
15 its jurisdiction equal protection of the laws. U.S. Const.  
16 Amend. XIV; Mont. Const., Art. II, Section 4.

17 42. Article II, Section 3, Mont. Const., bestows upon the  
18 citizens of this state inalienable rights to pursue life's  
19 basic necessities, enjoy and defend their lives and  
20 liberties, acquire, possess and protect property, and seek  
21 their safety, health and happiness in all lawful ways.  
22 Article II, Section 26, Mont. Const., guarantees the right  
23 to trial by jury.

24 43. Courts shall be open to every person, and speedy remedy  
25 afforded for every injury of person, property, or character.  
26 Mont. Const., Art. II, Sect. 16. Right and justice shall be  
27 administered without sale, denial, or delay. *Id.*

28 //

1 44. Section 39-2-915, M.C.A., provides that a party may offer to  
2 arbitrate and, if the other party rejects the offer, the  
3 offering party shall be awarded attorney fees as costs if  
4 the offering party prevails at trial, but that the rejecting  
5 party is not entitled to an award of attorney fees if the  
6 rejecting party prevails at trial.

7 45. Section 39-2-915, M.C.A., has a discriminatory impact in  
8 that it rewards an offering party but punishes a rejecting  
9 party by not affording attorney fees to the rejecting party  
10 even if the rejecting party prevails at trial. It also has  
11 a discriminatory impact in that Plaintiff, by her wrongful  
12 discharge claim, is treated dissimilar to other litigants by  
13 discouraging the exercise of her inalienable rights,  
14 chilling her unfettered right to a trial by jury, and  
15 closing the courthouse doors to speedy remedy without sale,  
16 denial, or delay..

17 46. It is against the public policy and laws of this state to  
18 grant one party the right to attorney fees, but not the  
19 other; violates Plaintiff's right to contract; imposes a  
20 term by which Plaintiff neither knowingly nor voluntarily  
21 agreed to; and imposes costs upon Plaintiff, e.g.,  
22 arbitrator fees, that are not imposed on every other citizen  
23 bringing suit.

24 47. Section 39-2-915, M.C.A., is not related to a legitimate  
25 government purpose, is an arbitrary and discriminatory  
26 treatment of Plaintiff, and wholly irrelevant to the  
27 achievement of the legislature's objective.

28 //

1 48. Because § 39-2-915, M.C.A., is not related to a legitimate  
2 government purpose and is arbitrary and discriminatory, it  
3 violates Plaintiff's equal protection and due process  
4 rights.

5 49. Section 39-2-915, M.C.A., is unconstitutional and should not  
6 be enforced.


7 **DEMAND FOR JURY**

8 Plaintiff requests trial by jury of her peers.

9 **WHEREFORE**, Plaintiff prays for relief against Defendants as  
10 follows:

- 11 1. That Plaintiff be awarded lost wages, fringe benefits, and  
12 interest against Defendants for wrongful termination of  
13 Plaintiff's employment;
- 14 2. That Plaintiff be awarded punitive damages against  
15 Defendants for blacklisting Plaintiff and for maliciously  
16 terminating her employment;
- 17 3. That Plaintiff be awarded attorney fees, costs of suit, and  
18 interest to the extent allowed by law;
- 19 4. That § 39-2-915, M.C.A., be held unconstitutional; and  
20 5. That, in addition, for such other equitable and legal  
21 relief.

22 DATED this 4 day of October, 2016.

23  
24  
25   
26 Thomas Kazem,  
27 Attorney for Plaintiff  
28